

AMENDED IN SENATE FEBRUARY 25, 2002

**SENATE BILL**

**No. 1315**

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**Introduced by Senator Sher**

January 24, 2002

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An act to add Chapter 5 (commencing with Section 127625) to Part 2 of Division 107 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 1315, as amended, Sher.    Pharmaceuticals: bulk purchasing.

Existing law requires the State Department of Health Services to purchase vaccines and biological products in bulk from the federal Centers for Disease Control and Prevention or other sources at the lowest cost possible for use by providers in the immunization of children under the Medi-Cal and child health and disability prevention programs.

Existing law authorizes the Director of Corrections to adopt regulations relating to rebates for the purchase of pharmaceuticals, to enter into interagency agreements in this regard, and to contract for the services of a pharmaceutical benefits manager for specified services relating to purchasing pharmaceuticals for the treatment of offenders in state custody.

This bill would require the Governor to designate a central purchasing agency for purchasing pharmaceuticals. The bill would require the central purchasing agency to execute prescription drug purchasing agreements with certain state entities that purchase pharmaceuticals, unless the entity can purchase the pharmaceuticals for a lower price than through the central purchasing agency. The bill would authorize the central purchasing agency to ~~execute these~~

~~agreements with other state entities, including the University of California, local governmental entities, and private entities that choose enter into a prescription drug purchasing agreement with any other state entity or a county entity that chooses to participate. The bill would specify the authority and duties of the central purchasing agency, including, the authority to appoint and contract with a pharmaceutical benefits manager to negotiate prescription drug contracts.~~

The bill would establish reporting requirements for manufacturers of prescription drugs sold in this state ~~and wholesale distributors of prescription drugs in this state.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 ~~(1) Several different state agencies purchase prescription drugs~~  
4 ~~for individuals served by those agencies.~~

5 ~~(2) These various agencies use different methods to purchase~~  
6 ~~drugs.~~

7 ~~(3) By coordinating the purchasing efforts of these agencies,~~  
8 ~~the state can negotiate lower prices on drugs by purchasing in bulk.~~

9 ~~(4) The state is a major purchaser of prescription drugs and~~  
10 ~~should use its position to assist all residents to purchase drugs at~~  
11 ~~a reasonable price.~~

12 *(1) Many different state and county agencies purchase*  
13 *prescription drugs for individuals served by those agencies.*

14 *(2) Currently, the Department of General Services negotiates*  
15 *contracts with drug manufacturers on behalf of some state*  
16 *agencies. However, several state and county agencies are not*  
17 *included in this current purchasing process.*

18 *(3) The state and county agencies and the department do not*  
19 *have sufficient direction from the Legislature to maximize state*  
20 *savings.*

21 *(4) By better coordinating bulk purchasing contracts,*  
22 *establishing a formulary or formularies, and providing purchasing*  
23 *procedures and options for state and county agencies the state can*  
24 *negotiate lower prices for drugs on behalf of participating*  
25 *agencies.*

1     (5) *The state should study the option of including elements of*  
2 *the private sector in its bulk purchasing program.*

3     (b) It is the intent of the Legislature in enacting this legislation  
4 to do all of the following:

5     ~~(1) Initiate interagency bulk purchasing of prescription drugs,~~  
6 ~~provide pharmaceutical purchasing procedures and options for~~  
7 ~~state agencies, and require manufacturers and wholesale~~  
8 ~~distributors of pharmaceuticals in the state to report purchase~~  
9 ~~prices of drugs to the council.~~

10    ~~(2) Provide to business groups, health care service plans,~~  
11 ~~hospitals, hospital associations, and individual consumers the~~  
12 ~~opportunity to participate in the state-run bulk prescription drug~~  
13 ~~purchasing program.~~

14     *(1) Coordinate bulk purchasing of prescription drugs,*  
15 *implement a formulary system, implement “best practices”*  
16 *guidelines for individuals prescribing prescription drugs under*  
17 *this program, and allow a central purchasing agency to investigate*  
18 *and implement other options and strategies to achieve the greatest*  
19 *savings on prescription drugs with prescription drug*  
20 *manufacturers and wholesalers.*

21     *(2) Provide pharmaceutical purchasing procedures and*  
22 *options for state agencies and require manufacturers in the state*  
23 *to report the average manufacturer price of drugs.*

24     SEC. 2. Chapter 5 (commencing with Section 127625) is  
25 added to Part 2 of Division 107 of the Health and Safety Code, to  
26 read:

27  
28         CHAPTER 5.   BULK PURCHASING OF PHARMACEUTICALS  
29

30     127625. As used in this chapter, the following definitions  
31 shall apply:

32     (a) “Audit” means a systemic examination and collection of  
33 sufficient, competent evidential matter needed for an auditor to  
34 attest to the fairness of management’s assertions in financial  
35 statements and to evaluate whether management has sufficiently  
36 and effectively carried out its responsibilities and complied with  
37 applicable laws and regulations, conducted by an independent  
38 certified public accountant.

39     (b) “Department” means the State Department of Health  
40 Services.

(c) “Formulary” means a listing of drug products that may be dispensed as a result of purchasing covered under this chapter.

(d) “Pharmaceutical benefits manager” means an entity that procures prescription drugs at a negotiated rate under a contract and that may serve as a third-party prescription drug benefit administrator.

(e) “Prescription drug purchasing agreement” means a written agreement to pool prescription drug purchases in order to negotiate the best possible prices and to delegate authority to the central purchasing agency to make prescription drug contracts for these purchases.

(f) “Prescription drug,” “pharmaceutical,” or “drug” ~~mean~~ *means* a substance recognized as a drug in the United States Pharmacopoeia, the National Formulary, or the Homeopathic Pharmacopoeia of the United States, or any supplement thereto, that is dispensed pursuant to a prescription issued by an authorized health care practitioner for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in a human, as well as a prescription drug delivery system, testing kit, and related supplies.

127627. (a) The Governor shall designate a central purchasing agency for purchasing pharmaceuticals. Unless the state entity is authorized to elect not to participate pursuant to subdivision (b) of Section 127631, the following state entities shall participate in the prescription drug bulk purchasing program authorized under this chapter:

~~(1) State Department of Health Services.~~

~~(2) —~~

~~(1) State Department of Mental Health.~~

~~(3) —~~

~~(2) Department of Corrections.~~

~~(4) —~~

~~(3) Department of the Youth Authority.~~

~~(5) —~~

~~(4) State Department of Developmental Services.~~

~~(6) California Public Employees’ Retirement System.~~

~~(7) State Teachers’ Retirement System.~~

~~(8) —~~

~~(5) California State University.~~

(b) Any state *or county* department, agency, authority, institution, or ~~program, other than those specified in subdivision~~

~~(a), including the University of California, and any political subdivision of the state, may elect to participate in the prescription drug bulk program, other than a state entity specified in subdivision (a), may elect to participate in the coordinated purchasing program.~~

~~(c) Any business group, hospital, hospital associations, or other private entity may elect to participate in the prescription drug bulk purchasing program.~~

127631. (a) The central purchasing agency shall execute prescription drug purchasing agreements with all state entities specified in subdivision (a) of Section 127627.

(b) The central purchasing agency shall develop procedures that these state entities shall follow in purchasing pharmaceuticals. An entity *listed under subdivision (a) of Section 127627* may elect not to participate in the bulk purchasing of prescription drugs, pursuant to this chapter and the procedures established by the central purchasing agency, only if the entity is able to purchase the pharmaceuticals for a lower price than available through the central purchasing agency. An entity electing not to participate shall report to the central purchasing agency the price of any pharmaceuticals purchased and the name of the wholesaler, retailer, or manufacturer selling the pharmaceuticals.

127633. (a) At the option of any entity specified in subdivision (b) of Section 127627, the central purchasing agency may execute prescription drug purchasing agreements with that entity.

~~(b) At the option of any private entity, the central purchasing agency may execute prescription drug purchasing agreements with that entity, including self-funded benefit plans and business associations, for combined purchasing of pharmacy benefits management services or pharmaceutical products. No private entity may be compelled to participate in the prescription drug bulk purchasing program established under this chapter.~~

~~(b) The central purchasing agency shall solicit interest for participation in the bulk purchasing program from entities specified in subdivision (b) of Section 127627.~~

(c) An entity specified in subdivision (b) of Section 127627 that elects to participate in the bulk purchasing program shall enter into a prescription drug purchasing agreement with the central purchasing agency. The central purchasing agency or

1 *pharmaceutical benefits manager acting on the agency's behalf*  
2 *shall include the terms of those agreements in new requests for*  
3 *proposals or when contracts are renegotiated with pharmaceutical*  
4 *manufacturers. For purposes of implementing this section, the*  
5 *central purchasing agency may enter into new agreements with*  
6 *manufacturers or extend existing contracts.*

7 127635. (a) The central purchasing agency ~~shall~~ *may* appoint  
8 and contract with a pharmaceutical benefits manager for purposes  
9 of the prescription drug bulk purchasing program established  
10 under this chapter. *The central purchasing agency may negotiate*  
11 *and execute pharmaceutical benefits management contracts for*  
12 *the purpose of managing rising prescription drug costs for the*  
13 *state and all parties that have executed prescription drug*  
14 *purchasing agreements with the central purchasing agency.*

15 (b) The pharmaceutical benefits manager ~~shall~~ *may* do all of  
16 the following:

17 (1) *Negotiate price discounts, rebates, or other options that*  
18 *achieve the greatest savings on prescription drugs with*  
19 *prescription drug suppliers—manufacturers and wholesalers.*

20 (2) *Purchase prescription drugs for participating state, local*  
21 *governmental, and private and local governmental entities.*

22 ~~(3) Establish a single drug formulary.~~

23 ~~(e) The Governor, or the Governor's agents, shall construct a~~  
24 ~~single drug formulary~~

25 (3) *Establish a drug formulary or formularies.*

26 (4) *Act as a consultant to the central purchasing agency.*

27 (c) *The central purchasing agency may perform all of the*  
28 *activities set forth in paragraphs (1) to (3), inclusive, of*  
29 *subdivision (b).*

30 (d) *The central purchasing agency shall construct a drug*  
31 *formulary or formularies for use in conjunction with the*  
32 *prescription drug bulk purchasing plan. The drugs included in the*  
33 *formulary shall demonstrate effective treatment of illness for each*  
34 *therapeutic class at the most affordable price. The formulary may*  
35 *include generic or brand name drugs.*

36 ~~(d)—~~

37 (e) *Contracts proposed by the pharmaceutical benefits manager*  
38 *shall be executed by the central purchasing agency following*  
39 *approval by the Department of Finance pursuant to Section*  
40 *127639.*

1 ~~127637. The central purchasing agency may negotiate and~~  
2 ~~execute pharmaceutical benefits management contracts for the~~  
3 ~~purpose of managing rising prescription drug costs for the state~~  
4 ~~and all parties that have executed prescription drug purchasing~~  
5 ~~agreements with the central purchasing agency.~~

6 127639. The Department of Finance shall review any  
7 proposed contract, or amendment to an existing contract,  
8 authorized by this chapter before it is executed by the central  
9 purchasing agency. If the department makes the following  
10 findings, the department shall approve the contract and authorize  
11 the central purchasing agency to execute the contract:

12 (a) That the proposed contract meets the requirements of this  
13 chapter and would assist in effectively managing the costs for the  
14 programs involved.

15 (b) That the proposed contract would not result in jeopardizing  
16 state funds or funds due to the state.

17 127641. The central purchasing agency may renegotiate ~~and~~  
18 ~~amend any~~ existing prescription drug contracts to which the  
19 agency is a party for the purpose of managing rising drug costs.

20 127643. The central purchasing agency shall cause to be  
21 conducted an audit of any funds expended pursuant to any  
22 prescription drug purchasing agreement or pharmaceutical  
23 benefits management contract executed under this chapter for each  
24 fiscal year that the prescription drug purchasing agreement or  
25 pharmaceutical benefits management contract is in effect. The  
26 central purchasing agency shall submit the audit to the Assembly  
27 and Senate government policy and fiscal committees upon  
28 completion, but in no event later than December 31, after the end  
29 of the fiscal year subject to the audit.

30 127645. The central purchasing agency may explore  
31 innovative strategies by which the state may manage the  
32 increasing costs of prescription drugs and increase access to  
33 prescription drugs for all of the state's citizens, including by any  
34 of the following means:

35 ~~(a) Enacting fair prescription drug pricing policies.~~

36 ~~(b) Providing for discount prices or rebate programs for seniors~~  
37 ~~and persons without prescription drug insurance.~~

38 ~~(c)~~



1 (a) Coordinating programs offered by pharmaceutical  
2 manufacturers that provide prescription drugs for free or at  
3 reduced prices.

4 ~~(d)–~~

5 (b) Establishing programs aimed at educating health care  
6 practitioners authorized to prescribe prescription drugs *on behalf*  
7 *of entities specified in Section 127627* about the relative costs and  
8 benefits of various prescription drugs, with an emphasis on  
9 *adhering to the formulary or formularies established by the central*  
10 *purchasing agency*, generic substitution for brand name drugs  
11 when available and appropriate, prescribing older, less costly  
12 drugs instead of newer, more expensive drugs when appropriate,  
13 and prescribing lower dosages of prescription drugs, when  
14 available and appropriate.

15 ~~(e)–~~

16 (c) Studying the feasibility and appropriateness of requiring  
17 prescription drug manufacturers to disclose to the state  
18 expenditures for advertising, marketing, and promotion, as well as  
19 for provider incentives and research and development efforts.

20 ~~(f) Studying the feasibility and appropriateness of executing~~  
21 ~~prescription drug purchasing agreements with large private sector~~  
22 ~~purchasers of prescription drugs and including those private~~  
23 ~~entities in pharmacy benefit management contracts.~~

24 ~~(g) Studying the feasibility and appropriateness of authorizing~~  
25 ~~the establishment of voluntary private buying clubs, cooperatives,~~  
26 ~~or purchasing alliances comprised of small businesses or~~  
27 ~~individuals for the purpose of purchasing prescription drugs at~~  
28 ~~optimal prices.~~

29 ~~(h)–~~

30 (d) *Studying the feasibility and appropriateness of including in*  
31 *the bulk purchasing programs entities in the private sector,*  
32 *including employers, providers, and individual consumers.*

33 (e) Implementing other strategies, as permitted under state and  
34 federal law, aimed at managing escalating prescription drug prices  
35 and increasing affordable access to prescription drugs for all state  
36 citizens.

37 127647. The central purchasing agency ~~shall~~ *may* use existing  
38 distribution networks, including wholesale and retail distributors,  
39 to distribute pharmaceuticals for purposes of this chapter.



1 127649. (a) For purposes of this section, “average  
2 manufacturer price” means the average price paid to the  
3 manufacturer for a drug in the United States by wholesalers for  
4 drugs distributed to the retail pharmacy class of trade, after  
5 deducting customary prompt pay discounts.

6 (b) A person who manufactures a drug, including a person  
7 who manufactures a generic drug, that is sold in this state shall file  
8 with the department, annually or more frequently as determined by  
9 the department, both of the following:

10 (1) The average manufacturer price for the drug.

11 (2) The price that each ~~wholesaler~~ *purchaser* in this state pays  
12 the manufacturer to purchase the drug.

13 (c) The department and the Attorney General may investigate  
14 the manufacturer to determine the accuracy of the information  
15 provided under this section. The Attorney General may take  
16 appropriate action to enforce this section.

17 (d) The department shall report the information collected under  
18 subdivision (b) to the central purchasing agency.

19 ~~127651. (a) On the request of the central purchasing agency,~~  
20 ~~a person who engages in the wholesale distribution of drugs in this~~  
21 ~~state shall file with the department information showing the actual~~  
22 ~~price at which the wholesale distributor sells a particular drug to~~  
23 ~~a retail pharmacy.~~

24 ~~(b) The department shall adopt rules and regulations to~~  
25 ~~implement this section.~~

26 ~~(c) The Attorney General may investigate the distributor to~~  
27 ~~determine the accuracy of the information provided under this~~  
28 ~~section. The Attorney General may take appropriation action to~~  
29 ~~enforce this section.~~